

## § 402.2b

## 17 CFR Ch. IV (4-1-02 Edition)

(in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut.

Column 27—When all possible (net) residual position interim haircuts have been netted, enter under “Hedging Disallowance Haircuts” all hedging disallowance haircuts calculated in the netting procedures, each in its appropriate category.

Enter under “Total Hedging Disallowance Haircut” the sum of all the hedging disallowance haircuts entered in column 27. Carry to Schedule A, line 2c.

Column 28—Under “Qualified Netting Interim Haircuts” enter in the appropriate category the absolute value of the haircut given under “Net Residual Position Interim Haircut” at the highest hedging disallowance factor used for that category (columns 26, 24, or 22). This value will also be the smallest of the net residual position interim haircuts in that category. If the position in a given category was not used in hedging then enter the absolute value of the residual position interim haircut from column 20.

Sum the qualified netting interim haircuts, enter this value under “Residual Net Position Haircut,” and carry to Schedule A, line 2d.

[52 FR 27931, July 24, 1987, as amended at 53 FR 28985, Aug. 1, 1988]

## § 402.2b [Reserved]

### § 402.2c Appendix C—Consolidated computations of liquid capital and total haircuts for certain subsidiaries and affiliates.

(a) *Consolidation.* (1) A government securities broker or dealer (the “parent broker or dealer”), in computing its liquid capital and total haircuts pursuant to § 402.2:

(i) Shall consolidate in a single computation of liquid capital the assets and liabilities of any subsidiary or affiliate for which the parent broker or dealer guarantees, endorses, or assumes directly or indirectly the obligations or liabilities if the parent broker or dealer has obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate;

(ii) May not consolidate in a single computation of liquid capital the assets and liabilities of any subsidiary or affiliate for which the parent broker or

dealer guarantees, endorses, or assumes directly or indirectly the obligations or liabilities if the parent broker or dealer has not obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate, but in that event, the parent broker or dealer shall compute its total haircuts by adding the total haircuts of each such subsidiary or affiliate computed in accordance with the provisions of § 402.2 to the haircuts of the parent broker or dealer computed separately in accordance with the provisions of § 402.2; and

(iii) May consolidate in its computation of liquid capital the assets and liabilities of any majority owned and controlled subsidiary or affiliate for which the parent broker or dealer does not guarantee, endorse or assume directly or indirectly the obligations or liabilities if the parent broker or dealer has obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate.

(2) With respect to any subsidiary or affiliate whose assets and liabilities are consolidated in the parent broker’s or dealer’s computation of liquid capital according to the provisions of paragraph (a)(1)(i) or (a)(1)(iii) of this section, the parent broker or dealer shall compute its haircuts in accordance with the provisions of § 402.2 as if the consolidated entity were one firm, or, in the alternative, shall add the total haircuts of each consolidated subsidiary or affiliate computed in accordance with the provisions of § 402.2 to the haircuts of the parent broker or dealer computed separately in accordance with the provisions of § 402.2.

(b) *Required counsel opinion.* The opinion of counsel referred to in paragraph (a) of this section shall demonstrate to the satisfaction of the Commission, through the Designated Examining Authority, that net asset values, or the portion thereof related to the parent broker’s or dealer’s ownership interest in a majority owned and controlled subsidiary or affiliate, may be caused by the parent broker or dealer or an appointed trustee to be distributed to the parent broker or dealer within 30 calendar days. Such opinion shall also set forth the actions necessary to cause

such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholder employees, litigants and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the Designated Examining Authority by rule or interpretation may require. Such opinion shall be current and periodically renewed in connection with the parent broker's or dealer's annual audit pursuant to § 240.17a-5 of this title, as made applicable to government securities brokers or dealers by § 405.2 of this chapter, or upon any material change in circumstances.

(c) *Principles of consolidation.* The following minimum and non-exclusive requirements shall govern the consolidation of a subsidiary or affiliate in the computation of total liquid capital and total haircuts of a government securities broker or dealer pursuant to this section:

(1) The total liquid capital of the government securities broker or dealer shall be reduced by the estimated amount of any taxes reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(2) Liabilities of a consolidated subsidiary or affiliate that are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall not be added to consolidated net worth unless such subordination extends also to the claims of present or future creditors of the parent broker or dealer and all consolidated subsidiaries.

(3) Subordinated liabilities of a consolidated subsidiary or affiliate that are consolidated in accordance with paragraph (c)(2) of this section may not be prepaid, repaid or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provision of § 240.15c3-1d of this title, as modified by § 402.2d.

(4) Each government securities broker or dealer included within the consolidation shall at all times be in

compliance with the liquid capital or net capital requirement to which it is subject.

(d) *Certain Precluded Acts.* Even if consolidation is not required or allowed under paragraph (a) of this section, no parent broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the parent broker's or dealer's computation of liquid capital.

**§ 402.2d Appendix D—Modification of § 240.15c3-1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.**

Section 240.15c3-1d of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications.

(a) References to “broker or dealer” include government securities brokers and dealers.

(b) References to “17 CFR 240.15c3-1” mean § 402.2.

(c) Section 240.15c3-1d(a)(2)(iii) is modified to read as follows:

“(iii) The term “Collateral Value” of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the haircuts specified in § 402.2a of this title.”

(d) References to “17 CFR 240.15c3-1d” mean that section as modified by this section.

(e) Section 240.15c3-1d(b)(6)(iii) is modified to read as follows:

“(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender, with the prior written consent of the government securities broker or dealer and the Examining Authority for such broker or dealer, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer may not be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. No single secured demand